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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-2069

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION AND REPORT
OF THE
SPECIAL MASTER

ERIC SCOTT,

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

FRIDAY, AUGUST 15, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
Notary Public of the State of New Jersey at the
United States District Court House, One Gerry Plaza,
Camden, New Jersey, 08102, commencing at 10:05 AM.

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856-546-1100

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1 JUDGE RISSELL: I am now reopening
2 proceedings in the case of Eric Scott, docket number
3 08-2069.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mojias jury charges to
11 the extent applicable to the allegations of Mr.
12 Scott.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Scott was housed in Trailer Number
18 Four on the morning of August 12, 1997 when the
19 alleged incident to his body occurred. He testified
20 that he was sleeping in his top bunk, that he was
21 snatched out of his bunk, that his head was hit
22 against the lockers, that he removed his clothes as
23 instructed, that he might have been doing so more
24 slowly than the SOG officers liked and that they
25 began at this point to beat him, hitting him in the

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1 shoulders, the front of his head and knocking him to
2 the ground, kicking him while he was on the ground
3 and so forth. He said he was beaten for some 15
4 minutes before they stopped, shackled him and took
5 him to the gym. Another way he characterized it was
6 he was hit about 15 times including kicks. There was
7 no bleeding that occurred in this matter.

8 Plaintiff then testifies that once in
9 the gym he was put either in or near the cage, I
10 believe in the cage is at least one way he
11 characterized it, and repeatedly hit again with
12 sticks. This supposedly took place in full view of
13 all persons in the gym which included a number of SOG
14 officers and civilians from time to time. Frankly,
15 the description of the alleged events in the gym
16 casts doubt upon the credibility of plaintiff's
17 description of incidents in the jail cell as well.

18 When you add to this the fact of the
19 extent of this supposed repeated beating, the Master
20 finds that these descriptions of these events are,
21 indeed, fanciful. I can understand and have found
22 that there have been occasions where over very short
23 durations beatings and pain have been inflicted and
24 where that has other indicia of credibility including
25 the possibility that the assault might go undetected,

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1 there have, in fact in some cases , been findings for
2 the plaintiffs in these cases. But this description
3 of such repeated, lengthy beatings under
4 circumstances where they could be readily observed by
5 others, certainly others who would act with
6 sufficient responsibility to report or curtail them,
7 is just not credible.

8 The insistence on the date of August 12
9 seems to be a bit misplaced because the report of
10 Ombudsman Turner reflects that Trailer Number Four
11 actually was being searched on August 1st. And I
12 want to describe that report.

13 He states in his report,
14 contemporaneous document: The search of Trailer
15 Number Four began at approximately 5:55 PM. The
16 searches I observed were also done in a professional
17 manner. There was little or no disarrangement of the
18 inmates' bed areas, inmates returning to bed areas
19 offered little or no concerns.

20 So it does appear from this and also
21 from his testimony that Mr. Turner was on the scene
22 and certainly did not witness anything like the
23 conduct described here.

24 As far as the question of fact and
25 injury is concerned, this plaintiff alleged

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1 significant injury to his back. On the other hand,
2 there were no contemporaneous references to any back
3 injury or problems, and from the evidence presented
4 here, it was no earlier than 2001 and maybe as late
5 as 2004 that he received a back brace. Yet he still
6 attributes that condition to the events which
7 occurred at Bayside in 1997.

8 Once again, there just is no inherent
9 common sense in that assessment.

10 Finally, and although it's not
11 determinative by any means, I can assess the
12 credibility of the witness by reason of past criminal
13 convictions. And I note that a number of his past
14 criminal convictions involve crimes of dishonesty.
15 Accordingly, I find that that also impacts his
16 credibility.

17 For all reasons recited above, I
18 determine that Mr. Scott has not established the
19 cause of action which he asserts here. And I note in
20 closing that, although not every item of evidence has
21 been discussed in this opinion/report, all the
22 evidence presented to the Special Master was reviewed
23 and considered.

24 For the reasons set forth above, I
25 recommend in this report that the district court

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1 enter an order and judgment of no cause for action

2 with regard to Eric Scott.

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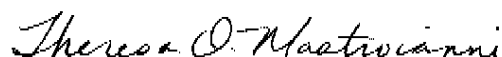
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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: August 26, 2008

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